IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 7476 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMBATORE PIONEER MILLS LTD.

Versus

PARSOTTAM HARIBHAI & CO. THRO'CHETANKUMAR PARSOTTAMBHAI

Appearance:

MR RD DAVE for Petitioners

NOTICE SERVED for Respondent No. 1

Mr. H.L. Jani, APP Respondent No. 2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 05/03/2001

ORAL JUDGEMENT

Heard learned Advocate Mr. R.D. Dave for the

petitioner and learned A.P.P. Mr.H.L. Jani for the respondent no.2-State.

The petitioners have prayed to quash and set aside Criminal Case no.17/2000 filed by the respondent no.1 in the Court of J.M.F.C., Manavdar, District Junagadh which is registered as Inquiry Case no.17/2000.

The certified copy of the complaint produced at Annexure "A" disclose the facts that the present petitioners are the accused nos.1 to 4 of the said complaint filed by the respondent no.2 on the facts that the petitioner no.1 is a Company and petitioners nos.2 and 3 are Managing Director and Chairman respectively while the petitioner no.5 is a commission agent of the petitioner no.1-Company. That at the instance of the petitioners nos.2 and 3 who are hereinafter referred to as the accused nos.2 and 3 purchase of cotton was made in the month of April, 1999 by the petitioner no.1 from the respondent no.1 on credit with the agreement that the payment shall be made within thirty days of the delivery of the goods and interest at the rate of 21% per annum on outstanding dues shall be paid if the amount is not paid within a stipulated period. That the petitioner accordingly purchased goods from the respondent no.1 time and again, and as such, earned the confidence, and thereafter, failed to make payment of the goods purchased. That on account of such sale of goods an aggregate amount of Rs.22,90,201/- with accrued interest at the rate of 21% per annum has remained outstanding, due and payable by the present petitioners to the respondent no.1. That despite repeated demands, the petitioner having failed to make the payment in due discharge of obligation, suggests that the petitioners intended since inception to commit criminal breach of trust and to cheat the respondent no.1, and as such, the petitioners as accused of the said complaint have committed an offence made punishable under Secs.406,420 r.w.s.114 of the Indian Penal Code.

Initially, vide order dated 18-12-2000, show cause notice was issued and the respondent no.1 has appeared through an Advocate, however, no affidavit-in-reply has been filed. That by subsequent order dated 26-2-2001, rule was issued and matter was fixed for hearing. Today, when the matter was taken up for final hearing, learned Advocate for the respondent no.1 could not remain present.

The documentary evidence produced on record also include a Civil Suit filed by the respondent no.1 against

the present petitioner as per copy produced at Annexure "E" for the outstanding dues of goods purchased from the respondent no.1. The perusal of complaint clearly suggest that the dispute between the parties is purely of civil nature and the uncontroverted version stated in the complaint even if taken at its face value could not be said to constitute offences stated therein, and as such, it would be in the interest of justice to quash and set aside the complaint particularly in view of the fact that the respondent no.1 has already filed a suit against the present petitioners to claim and recover the outstanding dues as stated in the complaint.

In the absence of any explanation or affidavit-in-reply, following operative orders are passed:

The petition is allowed. The impugned complaint being M. Case no.9/2000 initiated from Inquiry Case no.17/2000 in the Court of learned J.M.F.C., Manavdar, District Junagadh and subsequent proceedings thereto are hereby quashed and set aside. Rule to that extent is made absolute.

(A.K.Trivedi,J.)

stanley-akt.